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SENATE BILL 66

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Timothy Z. Jennings

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO EMPLOYMENT LAW; AMENDING THE MINIMUM WAGE ACT;
EXEMPTING EMPLOYEES OF THE STATE OR A POLITICAL SUBDIVISION OF
THE STATE FROM CERTAIN PROVISIONS OF THE MINIMUM WAGE ACT;
RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN
LAWS 2007; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 50-4-21 NMSA 1978 (being Laws 1955,
Chapter 200, Section 2, as amended by Laws 2007, Chapter 46,
Section 45 and by Laws 2007, Chapter 47, Section 1) is amended
to read:

"50-4-21. DEFINITIONS.--As used in the Minimum Wage Act:

A. "employ" includes suffer or permit to work;

B. "employer" includes any individual, partnership,
association, corporation, business trust, legal representative

1 or any organized group of persons employing one or more
2 employees at any one time, acting directly or indirectly in the
3 interest of an employer in relation to an employee, but shall
4 not include the United States, the state or any political
5 subdivision of the state; provided, however, that for the
6 purposes of Subsection A of Section 50-4-22 NMSA 1978,
7 "employer" includes the state or any political subdivision of
8 the state; and

9 C. "employee" includes an individual employed by an
10 employer, but shall not include:

11 (1) an individual employed in domestic service
12 in or about a private home;

13 (2) an individual employed in a bona fide
14 executive, administrative or professional capacity and
15 forepersons, superintendents and supervisors;

16 (3) an individual employed by the United
17 States, the state or any political subdivision of the state;
18 provided, however, that for the purposes of Subsection A of
19 Section 50-4-22 NMSA 1978, "employee" includes an individual
20 employed by the state or any political subdivision of the
21 state;

22 (4) an individual engaged in the activities of
23 an educational, charitable, religious or nonprofit organization
24 where the employer-employee relationship does not, in fact,
25 exist or where the services rendered to such organizations are

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1 on a voluntary basis. The employer-employee relationship shall
2 not be deemed to exist with respect to an individual being
3 served for purposes of rehabilitation by a charitable or
4 nonprofit organization, notwithstanding the payment to the
5 individual of a stipend based upon the value of the work
6 performed by the individual;

7 (5) salespersons or employees compensated upon
8 piecework, flat rate schedules or commission basis;

9 (6) students regularly enrolled in primary or
10 secondary schools working after school hours or on vacation;

11 (7) registered apprentices and learners
12 otherwise provided by law;

13 (8) persons eighteen years of age or under who
14 are not students in a primary, secondary, vocational or
15 training school;

16 (9) persons eighteen years of age or under who
17 are not graduates of a secondary school;

18 (10) G.I. bill trainees while under training;

19 (11) seasonal employees of an employer
20 obtaining and holding a valid certificate issued annually by
21 the director of the labor [~~and industrial~~] relations division
22 of the [~~labor~~] workforce solutions department. The certificate
23 shall state the job designations and total number of employees
24 to be exempted. In approving or disapproving an application
25 for a certificate of exemption, the director shall consider the

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1 following:

2 (a) whether such employment shall be at
3 an educational, charitable or religious youth camp or retreat;

4 (b) that such employment will be of a
5 temporary nature;

6 (c) that the individual will be
7 furnished room and board in connection with such employment, or
8 if the camp or retreat is a day camp or retreat, the individual
9 will be furnished board in connection with such employment;

10 (d) the purposes for which the camp or
11 retreat is operated;

12 (e) the job classifications for the
13 positions to be exempted; and

14 (f) any other factors that the director
15 deems necessary to consider;

16 (12) any employee employed in agriculture:

17 (a) if the employee is employed by an
18 employer who did not, during any calendar quarter during the
19 preceding calendar year, use more than five hundred man-days of
20 agricultural labor;

21 (b) if the employee is the parent,
22 spouse, child or other member of the employer's immediate
23 family; for the purpose of this subsection, the employer shall
24 include the principal stockholder of a family corporation;

25 (c) if the employee: 1) is employed as

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1 a hand-harvest laborer and is paid on a piece-rate basis in an
2 operation that has been, and is customarily and generally
3 recognized as having been, paid on a piece-rate basis in the
4 region of employment; 2) commutes daily from the employee's
5 permanent residence to the farm on which the employee is so
6 employed; and 3) has been employed in agriculture less than
7 thirteen weeks during the preceding calendar year;

8 (d) if the employee, other than an
9 employee described in Subparagraph (c) of this paragraph:

10 1) is sixteen years of age or under and is employed as a
11 hand-harvest laborer, is paid on a piece-rate basis in an
12 operation that has been, and is generally recognized as having
13 been, paid on a piece-rate basis in the region of employment;
14 2) is employed on the same farm as the employee's parent or
15 person standing in the place of the parent; and 3) is paid at
16 the same piece-rate as employees over age sixteen are paid on
17 the same farm; or

18 (e) if the employee is principally
19 engaged in the range production of livestock or in milk
20 production;

21 (13) an employee engaged in the handling,
22 drying, packing, packaging, processing, freezing or canning of
23 any agricultural or horticultural commodity in its
24 unmanufactured state; or

25 (14) employees of charitable, religious or

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1 nonprofit organizations who reside on the premises of group
2 homes operated by such charitable, religious or nonprofit
3 organizations for persons who have a mental, emotional or
4 developmental disability."

5 Section 2. EMERGENCY.--It is necessary for the public
6 peace, health and safety that this act take effect immediately.

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